

MONTANA LEGISLATIVE HISTORY

Chapter 275 19 73

Bill H 54 S _____

Original bill & history X c

H. Committee on Bus + Ind

Hearing Date(s) 1/10 X c

1/12 X c

1/17 X c

_____ c

Date Out _____ c

S. Committee on Business ~ Industry

Hearing Date(s) 2-21 _____ c

2-28 _____ c

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_____ c

Did this bill originate in an interim committee? _____ Yes 7 No

Committee _____

Report _____

1 ~~Murphy~~ HOUSE BILL NO. 54 *Eagle G. Gandy*

2 INTRODUCED BY *R. Harper* *James H. Whitcomb*

3 *Shawley* *Bennett* *Watt* *Benjamin* *Brown*

4 *MARBY* *Kimble* *Quilley* A BILL FOR AN ACT ENTITLED: "AN ACT TO BE CITED AS THE

5 MONTANA UNFAIR TRADE PRACTICES AND CONSUMER PROTECTION ACT

6 OF 1973; PROHIBITING UNFAIR TRADE PRACTICES AND PROVIDING

7 INVESTIGATION PROCEDURES AND PENALTIES FOR VIOLATIONS OF THE

8 ACT."

10 BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF

11 MONTANA:

12 Section 1. As used in this act:

13 (1) "Person" means natural persons, corporations, *Law*
14 trusts, partnerships, incorporated or unincorporated *McNair*
15 associations, and any other legal entity. *Edwards*

16 (2) "Trade" and "commerce" mean the advertising, *Edwards*
17 offering for sale, sale, or distribution of any services and
18 any property, tangible or intangible, real, personal or
19 mixed, and any other article, commodity, or thing of value,
20 wherever situate, and shall include any trade or commerce
21 directly or indirectly affecting the people of this state. *Edwards*

22 (3) "Documentary material" means the original or a
23 copy of any book, record, report, memorandum, paper,
24 communication, tabulation, map, chart, photograph,
25 mechanical transcription, or other tangible document or

1 recording, wherever situate.

2 (4) "Examination" of documentary material includes
3 the inspection, study, or copying of such material, and the
4 taking of testimony under oath or acknowledgment in respect
5 to any such documentary material or copy thereof.

6 Section 2. Unfair methods of competition and unfair
7 or deceptive acts or practices in the conduct of any trade
8 or commerce are unlawful.

9 Section 3. (1) It is the intent of the legislature
10 that in construing section 2 of this act due consideration
11 and weight shall be given to the interpretations of the
12 federal trade commission and the federal courts relating to
13 section 5 (a) (1) of the Federal Trade Commission Act [15
14 U.S.C., 45 (a) (1)], as amended; and

15 (2) The attorney general may make rules and
16 regulations interpreting the provisions of section 2 of this
17 act. Such rules and regulations shall not be inconsistent
18 with the rules, regulations and decisions of the federal
19 trade commission and the federal courts in interpreting the
20 provisions of section 5 (a) (1) of the Federal Trade
21 Commission Act [15 U.S.C., 45 (a) (1)], as amended.

22 Section 4. Nothing in this act shall apply to:

23 (1) actions or transactions permitted under laws
24 administered by the Montana public service commission acting
25 under statutory authority of this act or the United States.

1 (2) acts done by the publisher, owner, agent, or
2 employee of a newspaper, periodical or radio or television
3 station in the publication or dissemination of an
4 advertisement, when the owner, agent or employee did not
5 have knowledge of the faults, misleading or deceptive
6 character of the advertisement and did not have a direct
7 financial interest in the sale or distribution of the
8 advertised product or service.

9 Section 5. Whenever the attorney general has reason to
10 believe that any person is using, has used, or is about to
11 use any method, act or practice declared by section 2 of
12 this act to be unlawful, and that proceeding would be in the
13 public interest, he may bring an action in the name of the
14 state against such person to restrain by temporary or
15 permanent injunction the use of such method, act or
16 practice, upon the giving of appropriate notice to that
17 person. The notice must state generally the relief sought
18 and be served in accordance with section 13 of this act in
19 at least three (3) days before the hearing of the action.
20 The action may be brought in the district court in which
21 such person resides or has his principal place of business,
22 or, with consent of the parties, may be brought in the
23 district court of Lewis and Clark County. The courts are
24 authorized to issue temporary or permanent injunctions to
25 restrain and prevent violations of this act, and such

1 injunctions shall be issued without bond.

2 Section 6. The court may make such additional orders
3 or judgments as may be necessary to restore to any person
4 any moneys or property, real or personal, which may have
5 been acquired by means of any practice in this act declared
6 to be unlawful, including the appointment of a receiver or
7 the revocation of a license or certificate authorizing that
8 person to engage in business in this state, or both.

9 Section 7. When a receiver is appointed by the court
10 pursuant to this act, he has the power to sue for, collect,
11 receive and take into his possession all goods and chattels,
12 rights and credits, moneys and effects, lands and tenants,
13 books, records, documents, papers, choses in action, bills,
14 notes and property of every description, derived by means of
15 any practice declared to be illegal and prohibited by this
16 act, including property with which such property has been
17 mingled if it cannot be identified in kind because of such
18 commingling, and to sell, convey, and assign the same and
19 hold and dispose of the proceeds thereof under the direction
20 of the court. Any person who has suffered damages as a
21 result of the use of employment of any unlawful practices
22 and submits proof to the satisfaction of the court that he
23 has in fact been damaged, may participate with general
24 creditors in the distribution of the assets to the extent he
25 has sustained out-of-pocket losses. In the case of a

1 partnership or business entity, the receiver shall settle
2 the estate and distribute the assets under the direction of
3 the court. The court has jurisdiction of all questions
4 arising in the proceedings and may make orders and judgments
5 as may be required.

6 Section 8. (1) Any person who purchases or leases
7 goods or services primarily for personal, family or
8 household purposes and thereby suffers any ascertainable
9 loss of money or property, real or personal, as a result of
10 the use or employment by another person of a method, act or
11 practice declared unlawful by section 2 of this act, may
12 bring an action under rules of civil procedure in the
13 district court in which the seller or lessor resides or has
14 his principal place of business or is doing business, to
15 recover actual damages or two hundred dollars (\$200),
16 whichever is greater. The court may, in its discretion,
17 award up to three (3) times the actual damages sustained and
18 may provide such equitable relief as it deems necessary or
19 proper.

20 (2) Persons entitled to bring an action under
21 subsection (1) of this section may, if the unlawful method,
22 act or practice has caused similar injury to numerous other
23 persons similarly situated and if they adequately represent
24 such similarly situated persons, bring an action on behalf
25 of themselves and others similarly injured and situated

1 persons to recover damages as provided for in subsection (1)
2 of this section. In any action brought under this section,
3 the court may in its discretion order, in addition to
4 damages, injunctive or other equitable relief.

5 (3) Upon commencement of any action brought under
6 subsection (1) of this section, the clerk of court shall
7 mail a copy of the complaint or initial pleading to the
8 attorney general and, upon entry of any judgment or decree
9 in the action, shall mail a copy of such judgment or decree
10 to the attorney general.

11 (4) In any action brought by a person under this
12 section, the court may award, in addition to the relief
13 provided in this section, reasonable attorneys' fees and
14 costs.

15 (5) Any permanent injunction, judgment or order of
16 the court made under section 5 of this act shall be prima
17 facie evidence in an action brought under section 8 of this
18 act that the respondent used or employed a method, act or
19 practice declared unlawful by section 2 of this act.

20 Section 9. In the administration of this act, the
21 attorney general may accept an assurance of voluntary
22 compliance with respect to any method, act or practice
23 deemed to be violative of the act from any person who has
24 engaged or was about to engage in any such method, act or
25 practice. Any such assurance shall be in writing and be

1 filed with and subject to the approval of district court in
2 which the alleged violator resides or has his principal
3 place of business, or the district court of Lewis and Clark
4 County. Assurance of voluntary compliance is not an
5 admission of violation for any purpose. Matters thus closed
6 may at any time be reopened by the attorney general for
7 further proceedings in the public interest, pursuant to
8 section 5.

9 Section 10. (1) When it appears to the attorney
10 general that the person has engaged in, is engaging in, or
11 is about to engage in any act or practice declared to be
12 unlawful by this act, or when he believes it to be in the
13 public interest that an investigation should be made to
14 ascertain whether a person in fact has engaged in, is
15 engaging in or is about to engage in, any act or practice
16 declared to be unlawful by this act, he may execute in
17 writing and cause to be served upon any person who is
18 believed to have information, documentary material or
19 physical evidence relevant to the alleged or suspected
20 violation, an investigative demand requiring such person to
21 furnish, under oath or otherwise, a report in writing
22 setting forth the relevant facts and circumstances of which
23 he has knowledge, or to appear and testify or to produce
24 relevant documentary material or physical evidence for
25 examination, at such reasonable time and place as may be

1 stated in the investigative demand, concerning the
2 advertisement, sale or offering for sale of any goods or
3 services or the conduct of any trade or commerce that is the
4 subject matter of the investigation.

5 (2) At any time before the return date specified in
6 an investigative demand, or within twenty (20) days after
7 the demand has been served, whichever period is shorter, a
8 petition to extend the return date, or to modify or set
9 aside the demand, stating good cause, may be filed in the
10 district court where the person served with the demand
11 resides or has his principal place of business or in the
12 district court of Lewis and Clark County.

13 Section 11. To accomplish the objectives and to carry
14 out the duties prescribed by this act, the attorney general,
15 in addition to other powers conferred upon him by this act,
16 may issue subpoenas to any person, administer an oath or
17 affirmation to any person, conduct hearings in aid of any
18 investigation or inquiry, prescribe forms and promulgate
19 rules and regulations as may be necessary, which rules and
20 regulations shall have the force of law; provided that none
21 of the powers conferred by this act may be used for the
22 purpose of compelling any natural person to furnish
23 testimony or evidence which might tend to incriminate him or
24 subject him to a penalty or forfeiture; and provided further
25 that information obtained pursuant to the powers conferred

1 by this act shall not be made public or disclosed by the
2 attorney general or his employees beyond the extent
3 necessary for law enforcement purposes in the public
4 interest.

5 Section 12. Service of any notice, demand or subpoena
6 under this act shall be made personally within this state,
7 but if such cannot be obtained, substitute service may be
8 made in the manner provided in the Montana Rules of Civil
9 Procedure.

10 Section 13. If any person fails or refuses to file any
11 statement or report, or obey any subpoena or investigative
12 demand issued by the attorney general, the attorney general
13 may, after notice, apply to the district court and, after
14 hearing thereon, request an order:

15 (1) granting injunctive relief to restrain the person
16 from engaging in the advertising or sale of any merchandise
17 or the conduct of any trade or commerce that is involved in
18 the alleged or suspected violation;

19 (2) vacating, annulling, or suspending the corporate
20 charter of a corporation created by or under the laws of
21 this state or revoking or suspending the certificate of
22 authority to do business in this state of a foreign
23 corporation or revoking or suspending any other licenses,
24 permits or certificates issued pursuant to law to such
25 person which are used to further the allegedly unlawful

1 practice; and

2 (3) granting such other relief as may be required,
3 until the person files the statement or report, or obeys the
4 subpoena or investigative demand. Any disobedience of any
5 final order entered under this section by any court shall be
6 punished as a contempt thereof.

7 Section 14. (1) Any person who violates the terms of
8 an injunction issued under section 5 of this act shall
9 forfeit and pay to the state a civil penalty of not more
10 than ten thousand dollars (\$10,000) per violation. For the
11 purposes of this section, the district court issuing an
12 injunction retains jurisdiction, and the cause continued,
13 and in such cases the attorney general acting in the name of
14 the state may petition for recovery of civil penalties.

15 (2) In any action brought under section 5 of this
16 act, if the court finds that a person is willfully using or
17 has willfully used a method, act or practice declared
18 unlawful by section 2 of this act, the attorney general,
19 upon petition to the court, may recover, on behalf of the
20 state, a civil penalty of not more than five hundred dollars
21 (\$500) per violation.

22 (3) Any person who engages in a fraudulent course of
23 conduct declared unlawful by section 2 of this act shall,
24 upon conviction, be fined not more than two thousand dollars
25 (\$2,000), imprisoned for not more than one (1) year, or

1 both, in the discretion of the court. Nothing in this
2 subsection limits any other provision of this act.

3 (4) For purposes of this section, a willful violation
4 occurs when the party committing the violation knew or
5 should have known that his conduct was a violation of
6 section 2 of this act.

7 Section 15. Upon petition by the attorney general, the
8 district court may, in its discretion, order the dissolution
9 or suspension or forfeiture of franchise of any corporation
10 which violates the terms of any injunction issued under
11 section 5 of this act.

12 Section 16. It is the duty of the county attorney to
13 lend to the attorney general such assistance as the attorney
14 general may request in the commencement and prosecution of
15 actions pursuant to this act, or, the county attorney with
16 prior approval of the attorney general may institute and
17 prosecute actions in the same manner as provided for the
18 attorney general. If an action is prosecuted by the county
19 attorney alone, he shall make a full report thereon to the
20 attorney general, including the final disposition of the
21 matter within thirty (30) days.

22 Section 17. If any provision of this act is declared
23 unconstitutional, or the application to any person or
24 circumstances is held invalid, the constitutionality of the
25 remainder of the act and its applicability to other persons

1 and circumstances is not affected.

2 Section 18. This act shall be cited as the "Montana
3 Unfair Trade Practices and Consumer Protection Act of 1973."

-End-

BUSINESS AND INDUSTRY COMMITTEE

January 10, 1973

The Business and Industry meeting was called to order this date at 10:30 a.m. with Chairman Mehrens presiding. All members were present with the exception of Rep. Laas.

The following bills were before the committee for discussion:

HB #29...Rep. Lockrem, main supporter, gave a summary of this bill. He proposed the following amendments:

1. On page 2, section 2, subsection (4), line 8 after the word "policy," by inserting the words "or certificate of insurance".
2. On page 3, section 2, line 24 after the word "insurance," by inserting the words "or certificate issued thereunder".
3. On page 7, section 3, subsection (7), line 2 after the word "policy," by inserting the words "or certificate of insurance".
4. On page 8, section 4, subsection (3), line 9 after the word "policy," by inserting the words "or certificate issued thereunder".

Other proponents testifying were Don E. Espelin, M.D.; Mr. Bill Norman; and Mr. Jerome Loendorf, a representative of Montana Medical Association. Mr. Loendorf asked to amend this bill on page 8, line 15 before the number "5." by inserting "Section". There were no opponents.

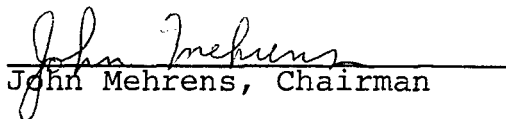
HB #67...Rep. Harper announced that the subcommittee on this bill would be ready to report next Wednesday, January 17.

HB #29...Rep. Quilici announced that the subcommittee on this bill would be ready to report Friday, January 12.

Action on HB 59 was taken. Rep. Quilici moved that HB 59 as amended DO PASS. Rep. Harper seconded the motion and it passed unanimously.

Chairman Mehrens announced that HB 54 would be heard next meeting in the Governor's reception room.

There being no other business, the meeting was adjourned until Friday, January 12, at 10:30 a.m.


John Mehrens, Chairman

jb

BUSINESS AND INDUSTRY COMMITTEE

January 12, 1973

A joint meeting of the House and Senate committees was called to order this date at 10:30 a.m., in the Governor's Reception Room with Chairman Mehrens presiding. All members were present.

The following bills were before the committees for consideration:

House Bill 54. . . Rep. Harper, chief sponsor, gave a summary on this bill, which is attached. He suggested amendments to this bill (attached) and then introduced the following proponents: Mr. Dennis McFeely, member of the Federal Trade Commission; Mr. Clyde Jarvis, member of the Montana Farmers Union; Rep. James Lucas, co-sponsor of the bill; Dr. Jeanine Gilmartin, representing the Consumer Affairs Council; Mr. Harry L. Billings, from the AFL-CIO; Mr. Lawrence G. Stimatz, County Attorney from Butte; Mr. Roderic R. Gudgel, member of the Montana State Pharmaceutical Association; and Rep. Pat McKittrick, co-sponsor of this bill.

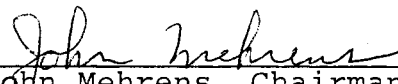
Prepared statements from the following are attached: Mr. Clyde Jarvis, Dr. Jeanine Gilmartin, and Mr. Harry L. Billings.

Opponents of the bill were Mr. Frank Switzer, from the Montana Chamber of Commerce; and Mr. Socs Vratiss, from the Montana Retail Association. Their prepared testimony is attached.

House Bill 29. . . Consideration of this bill will be taken up at the next meeting.

No action on these bills were taken. Chairman Mehrens will appoint a subcommittee on House Bill 54 at the next meeting.

There being no further business, the meeting was adjourned at 12:45 p.m.


John Mehrens, Chairman

HOUSE BILL NO. 54

INTRODUCED BY HARPER, LUCAS, ET AL (AND 49 OTHERS)

ARTICLE XIII, SEC. 1, SUB-SECTION 2.

"MONTANA UNFAIR TRADE PRACTICES AND CONSUMER PROTECTION ACT
OF 1973"

THIS BILL IS THE MODEL UNFAIR TRADE PRACTICES AND CONSUMER PROTECTION ACT RECOMMENDED BY THE FEDERAL TRADE COMMISSION, THE COUNCIL OF STATE GOVERNMENTS, AND VIRGINIA KNAUER, PRESIDENT NIXON'S ADVISOR ON CONSUMER AFFAIRS.

THE MODEL ACT HAS BEEN ADOPTED IN 10 STATES: ARIZONA, KANSAS, MARYLAND, MASSACHUSETTS, MISSOURI, NEW MEXICO, PENNSYLVANIA, RHODE ISLAND, TEXAS, AND VERMONT.

SECTION 1 IS A DEFINITION SECTION, AND NEEDS NO EXPLANATION.

SECTION 2 PROHIBITS UNFAIR AND DECEPTIVE ACT AND PRACTICES IN THE STATE OF MONTANA.

SECTION 3 REQUIRES THAT WHEN SECTION 2 OF THIS ACT IS BEING INTERPRETED, FOR EXAMPLE IN A COURT CASE, "GREAT WEIGHT" SHALL BE GIVEN TO INTERPRETATIONS GIVEN SIMILAR LANGUAGE IN FEDERAL LAW BY THE COURTS AND THE FEDERAL TRADE COMMISSION. THE ATTORNEY GENERAL CAN MAKE RULES AND REGULATIONS INTERPRETING SECTION 2. THESE RULES AND REGULATIONS MUST ALSO BE CONSISTENT WITH THE FEDERAL TRADE COMMISSION ACT.

SECTION 4 EXEMPTS TRANSACTIONS UNDER PUBLIC UTILITY LAWS BECAUSE THE PUBLIC SERVICE COMMISSION CAN CONTROL THAT MATTER. AND ~~IT~~ ALSO EXEMPTS NEWSPAPERS, RADIO AND TV, BUT ONLY WHEN THE PERSONNEL INVOLVED DID NOT KNOW THE ADVERTISING WAS FALSE OR MISLEADING, AND DID NOT HAVE A DIRECT STAKE IN THE PRODUCT BEING ADVERTISED.

SECTION 5 AND 6 PROVIDES THAT THE ATTORNEY GENERAL CAN BRING SUITS FOR INJUNCTIONS AGAINST VIOLATIONS. THE COURTS CAN ISSUE INJUNCTIONS, AND IF NECESSARY CAN REVOKE LICENSES AND APPOINT RECEIVERS. SECTION 7 PROVIDES IN DETAIL THE POWERS OF A RECEIVER.

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SECTION 8 PROVIDES FOR INDIVIDUAL AND CLASS ACTIONS BY PEOPLE BUYING THINGS FOR FAMILY, PERSONAL OR HOUSEHOLD USE. BECAUSE THE AMOUNTS ARE GENERALLY SMALL, THE ACT PROVIDES THAT THE PERSON GETS ACTUAL DAMAGES OR \$200, WHICHEVER IS GREATER. IF A NUMBER OF PEOPLE HAVE BEEN CHEATED BY THE SAME OPERATOR, ONE OF HIS VICTIMS CAN SUE FOR ALL OF THEM.

SECTION 9 WAS PUT IN TO KEEP EVERY LITTLE CASE FROM GOING TO COURT. IF THE ATTORNEY GENERAL WANTS WHAT HE THINKS IS A VIOLATION OF THE ACT TO STOP, HE CAN ACCEPT WHAT IS CALLED AN "ASSURANCE OF VOLUNTARY COMPLIANCE" FROM THE OTHER PARTY AND FILE IT WITH THE COURT, IF THE JUDGE APPROVES. THESE ASSURANCES ARE NOT CONFESSIONS OF ANY VIOLATION FOR ANY PURPOSE.

SECTION 10 GIVES THE ATTORNEY GENERAL AND/OR COUNTY ATTORNEY THE POWER TO INVESTIGATE VIOLATIONS. HE CAN ISSUE SO-CALLED "INVESTIGATIVE DEMANDS" REQUIRING PEOPLE TO TELL WHAT THEY KNOW ABOUT A POSSIBLE VIOLATION. THESE CAN BE CONTESTED IN COURT FOR GOOD CAUSE. HE CAN ALSO ISSUE SUBPOENAS AND HOLD HEARINGS ON POSSIBLE VIOLATIONS UNDER SECTION 11. IN ORDER TO PROTECT THE MERCHANT, THE ACT PROVIDES THEY CANNOT BE FORCED TO FURNISH ANY EVIDENCE WHICH MIGHT TEND TO INCRIMINATE THEM, OR SUBJECT THEM TO A FINE OR FORFEITURE.

SECTION 12 IS A TECHNICAL SECTION ON SERVING LEGAL PAPERS UNDER THIS ACT.

SECTION 13 HAS SOME TEETH IN IT. IF A PERSON REFUSES TO OBEY A SUBPOENA OR INVESTIGATIVE DEMAND, THE ATTORNEY GENERAL OR COUNTY ATTORNEY CAN GO TO COURT. HE CAN ASK THE JUDGE TO ISSUE AN INJUNCTION AGAINST THE SUSPECTED VIOLATION. HE CAN ASK FOR SUSPENSION OR CANCELLATION OF CORPORATION CHARTERS. HE CAN ASK THE COURT TO REVOKE LICENSES AND PERMITS INVOLVED IN THE SUSPECTED VIOLATION.

SECTION 14 COVERS PENALTIES. VIOLATION OF AN INJUNCTION CARRIES A CIVIL PENALTY OF UP TO \$10,000. VIOLATION OF THE ACT CAN CARRY A CIVIL PENALTY OF UP TO \$500.00. IF THERE IS FRAUD

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INVOLVED A FINE OF UP TO \$2,000 AND/OR UP TO 1 YEAR IN PRISON IS POSSIBLE. UNDER SECTION 15, IF A CORPORATION VIOLATES AN INJUNCTION, IT CAN BE DISSOLVED.

SECTION 16 REQUIRES COUNTY ATTORNEYS TO HELP THE ATTORNEY GENERAL IF HE ASKS THEM TO, AND ALSO GIVES THE COUNTY ATTORNEY THE AUTHORITY TO DO IT ON HIS OWN.

SECTION 17 SAYS THAT IF PART OF THE ACT IS UNCONSTITUTIONAL, THE REST OF IT REMAINS VALID. THIS IS A STANDARD PROVISION.

SECTION 18 MANDATES THAT THE BILL BE CALLED THE "MONTANA UNFAIR TRADE PRACTICE AND CONSUMER PROTECTION ACT OF 1973"

Rep. Bob. Harper

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Section 16. It is the duty of the county attorney to
lend to the attorney general such assistance as the attorney
general may request in the commencement and prosecution of
actions pursuant to this act, or, the county attorney with
~~prior approval of the attorney general~~ may institute and
prosecute actions in the ^{SAME} manner as provided for the attorney
general. If an action is prosecuted by the county attorney
alone, he shall notify make a full report thereon to the
attorney general as to the nature of the action and the
parties to the action within thirty (30) days of the filing
of the action. ; ~~including the final disposition of the~~
~~matter within thirty days (30) days.~~ The county attorney
shall make a report thereon to the attorney general within
thirty (30) days of the final disposition of the matter.

Harper

see 1
p. 12 in 12 with amendments
after the word "and" by striking the word "tenants" and
inserting in lieu thereof the word "tenements"

Statement of Clyde Jarvis, Great Falls, Montana-President of the Montana Farmers Union in support of House Bill 54 before the House Business and Industry Committee--January 12, 1973.

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Mr. Chairman and members of the committee--my name is Clyde Jarvis of Great Falls and I appear today representing the Montana Farmers Union in support of House Bill 54, a bipartisanly sponsored bill, which is not and should not be made a partisan issue.

The Montana Farmers Union, a statewide general agricultural organization composed of several thousand family farmers and ranchers, all of whom are consumers, is vitally interested in good consumer protection laws.

Our interest in the affairs of consumers is evidenced by our long standing support of and affiliation with the Consumer Federation of America. We were in attendance at the first general consumer meeting which was called together some years ago and met in the House chambers. We were prime movers in the formation of the Consumer Affairs Council, with which we are still affiliated and support.

We believe that Montanans are being subjected to unfair trade practices and deceptive advertising, some of which practices the advertising by omission. Such advertising as used by a major manufacturer of aspirins, which uses such phrases as and I quote, "Government tests prove that no aspirin is as effective in relieving pain as our aspirin" end of quote. What the manufacturer doesn't tell consumers, is that those same government test also conclusively prove is that the named brand of aspirin is no more effective in relieving pain than any other.

Montanans are being subjected to bait and switch advertising, where a few specials are advertised, but when the consumer attempts to buy the special it's all sold out and the consumer is pressured to buy a much higher priced item.

Page 2---Clyde Jarvis---Support of House Bill 54

Montanans are being subjected to all types of contests and earn money at home plans, where by paying an enrollment they are eligible to win or to be called to address envelopes, send in recipes, buy low priced products and many other schemes.

We are not interested in harassing the honest business, but in stopping the fly by night peddler, who with smooth talk and so called money back guarantees, who preys on unsuspecting consumers, is here to make the sale, but is gone when the product fails.

We sincerely believe that House bill 54, if properly funded and placed in the Attorney General's office would prove to be an effective tool in protecting not only the consumers of Montana but the honest businesses as well.

Therefore I sincerely urge your approval of House Bill 54.

Thank you.

21

Mr. Chairman, members of the House Business and Industry Committee, my name is Jeanine Gilmartin. I am here today at the request of the Board of Directors of Consumer Affairs Council, Incorporated to testify in favor of House Bill No. 54, the Montana Unfair Trade Practices and Consumer Protection Act of 1973. The Consumer Affairs Council believes that legislation is needed to offer protection and legal recourse to the consumers of Montana. Last Spring the Supreme Court ruled unanimously that the Federal Trade Commission has the power to protect consumers from unfair and deceptive business practices in matters other than those relating to the antitrust laws. House Bill No. 54 provides for consideration of the interpretations of the Federal Trade Commission and the Federal Courts in construing the definition of unfair or deceptive trade practices. This bill is not a novel innovation. It is one based on national standards and designed to promote and protect Montana consumers.

During the last two years the Consumer Affairs Council, Incorporated has received numerous written and oral complaints. Many of these have been referred to county attorney's and to the Attorney General's office. However, the county attorney and the Attorney General's office could take no action because they had no legal authority to do so. This bill will give that power not only to the Attorney General, but to county attorney's as well.

Further, this bill provides for class action against businesses engaged in unfair practices. Counsumer Affairs Council applauds the inclusion of this provision. If a business has been found guilty of an unfair or deceptive practice it should not be necessary for each individual who has been defrauded to bring suit.

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Lastly, Consumer Affairs Council, Incorporated notes that this bill is not directed against one company or business in Montana. In fact, we believe that this bill will also support the honest businessman in Montana by helping to eliminate those merchants who are purposely engaged in deceptive practices.

On behalf of the Board of Directors and membership of Consumer Affairs Council, Incorporated I urge your support and passage of House Bill No. 54.

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Box 1176, Helena, Montana

JAMES W. MURRY
EXECUTIVE SECRETARY

ZIP CODE 59601

405 NORTH LAST
CHANCE GULCH

STATEMENT IN SUPPORT OF HB 54 BEFORE THE HOUSE BUSINESS AND INDUSTRY COMMITTEE, FRIDAY, JANUARY 12, 1973, BY HARRY L. BILLINGS, DIRECTOR OF EDUCATION & INTER-GROUP RELATIONS, THE MONTANA STATE AFL-CIO.

* * * * *

Chairman Mehrens and Committee Members:

My name is Harry L. Billings and I appear here today for the Montana State AFL-CIO in support of House Bill 54 by Harper and 50 fellow members of the House of Representatives.

The Montana State AFL-CIO, as an organization representing 35,000 households, has long been in the forefront in support of legislation to protect the consumer in the marketplace.

This support has manifested itself in many ways. We have policy positions adopted by our delegate conventions which cover a wide panorama of consumer matters. We have testified on many occasions before legislative committees and various public agencies on behalf of consumer interests. We have been active in organizing and in support of citizen's consumer organizations such as the Consumer Affairs Council.

Among policy positions on consumer matters drafted by our conventions in recent years, are:

a. We support legislation aimed at stopping automobile and health insurance companies from arbitrarily cancelling insurance policies with no redress to the insured. We also support true "no-fault" automobile insurance.

b. We support legislation to protect consumers against unsatisfactory auto repair jobs.

HB 54--2

c. We support legislation to set minimum mobile home construction and equipment standards and to make retailers of such structures more accountable to purchasers.

d. We actively oppose unwarranted increases in utility and freight rates, and have so testified on numerous occasions.

e. We have given all-out opposition to inequitable tax measures, such as the 1971 sales tax proposal, which would have constituted a substantial drain on already straitened household budgets of Montana consumers.

f. We actively worked for establishing an Office of Consumer Counsel and are now vitally interested in legislation which will effectively implement that section of the new Constitution.

g. We have given continuing support to the enactment of general consumer protection legislation, such as HB 54 which is presently before you.

(Copies of several of these convention-adopted policy statements are included with this statement.)

It is our position that HB 54, given sufficient appropriation, can be a truly effective tool to protect Montana consumers against the machinations of a minority of businessmen who do not observe any code of business ethics when promoting their wares.

Among some of the numerous provisions which in our estimation commend HB 54 highly are:

a. Placing responsibility for consumer protection in the Office of Attorney General. The Attorney General's office is the logical place to administer and enforce consumer protection legislation, not only

HB 54---3

from the standpoint of governmental economy, but also to assure the quickest of redress for aggrieved consumers.

To place such responsibility elsewhere would require the creation of yet another expensive bureaucracy. It would also require complaints to be handled by an intermediary agency, along with all the additional grist for the "red tape mill", before cases requiring legal action could get into the courts for decision.

b. The penalty provisions, as incorporated in Section 14, along with granting the court discretion to award up to triple damages (section 8), and providing for revocation of the right to do business in Montana under Section 13, can be most effective in encouraging waywardly-inclined business entrepreneurs to improve their merchandising tactics.

c. We also approve of the "voluntary compliance" section (Section 9), fully realizing that a businessman might unknowingly and unintentionally violate a provision of the Act, and when informed of the violation, voluntarily seek to resolve a complaint by a consumer.

The experience in Silver Bow county, where there has been a consumer advocate in the Office of County Attorney for more than a year, indicates that many of such complaints can be satisfactorily disposed of without legal action.

From an overall view, we believe HB 54, adequately funded and enforced, will be the most important and far-reaching piece of legislation ever enacted to protect the Montana consumer in the areas covered by the bill. It's enactment will also help to protect the honest

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HB 54---4

businessman from the ruinous competition of the "fly-by-nighters" and the relatively few unscrupulous Main Street operators who by their actions give the entire business fraternity a disreputable image in the eyes of much of the consuming public.

Thank you.

RESOLUTION NO. 15

WHEREAS, untold numbers of Montana consumers are victimized annually in the marketplace because of sharp and deceptive trade practices by some few established businessmen and peddlers of a variety of products and services,

WHEREAS, while all consumers are "fair game", those most frequently preyed upon are the elderly, the poor and the unsuspecting,

WHEREAS, present state laws on deceptive, misleading and fraudulent business practices are not adequate to protect the consuming public,

WHEREAS, the drafters of the new State Constitution were aware that the general public is often defrauded by disreputable elements in the merchandising and contracting fields, among others, and wrote a provision into the new document ordering the Legislature to enact effective consumer education and protection legislation,

WHEREAS, those same drafters, aware, too, that there is presently no state agency charged with the responsibility of protecting the consumer interest in public utility rate hearings before the Public Service Commission, incorporated another section establishing the Office of Consumer Counsel as a Constitutional Office,

WHEREAS, these Constitutionally provided consumer protection clauses are merely policy statements until implemented by the Legislature,

THEREFORE BE IT RESOLVED, that this annual convention of the Hotel and Restaurant Employees and Bartenders insist that the 1973 and subsequent Legislatures enact legislation which will protect the consumer in the marketplace,

BE IT FURTHER RESOLVED, that the 1973 Legislature be requested to carry out the specific intent of the provision creating the Office of Consumer Counsel by providing the necessary funding to adequately staff this important new Constitutional Office,

AND BE IT FURTHER RESOLVED that all local unions be urged to contact the Legislative candidates from their districts to secure specific commitments that they will support the necessary enabling legislation to make effective the intent of these two sections of the new State Constitution.

Submitted by:

Montana State Council of Hotel and
Restaurant Employees and Bartenders

Adopted by Convention action August 18, 1972

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RESOLUTION NO. 20

WHEREAS, one-third of all new home units today are mobile or modular,

WHEREAS, the construction of many of these and the materials and appliances provided are frequently substandard,

WHEREAS, retention of an attorney and possible court action is often necessary in order to force retailers to live up to warranties and sales agreements,

WHEREAS, there are at present insufficient legal remedies available to purchasers of either mobile or modular homes should they find need to seek redress,

RESOLVED, that this 16th annual convention of the Montana State AFL-CIO seek legislation which will:

- a. set minimum construction standards which must be observed both in the in-state construction of such homes and those shipped into Montana for sale;
- b. Provide an adequate schedule of fines and other penalties which may be levied against dealers for failure to live up to warranties or sales agreements, and/or for product misrepresentation, and
- c. Provide civil remedies for redress by purchasers including all legal costs when such action is necessary to make dealers live up to warranties and sale agreements.

SUBMITTED BY: Resolutions committee of the 21st annual convention of the Montana State Building and Construction Trades Council

Adapted by Convention action August 18, 1972

29

RESOLUTION NUMBER 1

WHEREAS many of our members when driving their employers' cars or trucks become involved in an accident and the insurance company cancels or threatens to cancel the policy or raise the rate to a prohibitive figure. Then the employer discharges or threatens discharge of the employee, even though the driver was not at fault, and

WHEREAS many persons have an accident when driving their own cars and the insurance company cancels their policy or raises the rate to a prohibitive figure, even though the accident may not have been caused by the person whose policy is being cancelled, and

WHEREAS many of our members are covered under group Health and Welfare policy, and when they reach retirement age the insurance company cancels their coverage, regardless of how many years the member has been covered, or raises the rate to a prohibitive figure, and

WHEREAS the insurance companies autocratically raise rates or cancel policies with apparently little control by law or the insurance commissioner's office, now therefore be it

RESOLVED, That we hereby request the several state AFL-CIO Councils immediately institute an investigation into the autocratic actions of the insurance companies in their respective states in an effort to protect the purchaser of insurance coverage, particularly in the field of automobile insurance and group health and welfare insurance, and

BE IT FURTHER RESOLVED, That our State Council's forward all material pertaining to the results of this investigation to U. S. Senators Celler, and his committee, and

BE IT STILL FURTHER RESOLVED, That we bring his matter to the attention of the next State Legislature, and ask that body to find methods to provide recourse for the Public in this very serious matter.

Submitted by,
THE WESTERN COUNCIL OF
LUMBER AND SAWMILL WORKERS

Approved by Convention action August 19, 1967, 11th Annual Convention of the Montana State AFL-CIO.

RESOLUTION NO. 4

WHEREAS, the ever increasing cost of automobile insurance falls most heavily upon the wage worker causing many of them, either to forego such protection or to sacrifice other living necessities and,

WHEREAS, some thirty percent of the premium dollar is appropriated by lawyers and investigators with the legal profession skimming off one and one tenth billion dollars (\$1,100,000,000.00 annually) and,

WHEREAS, time has come for reform to halt the increasing premiums, and end arbitrary cancellations of policies and the need for long and costly litigation,

NOW THEREFORE BE IT RESOLVED, that this Fifteenth Annual Convention of the Montana State AFL-CIO go on record in support of, and work for the passage of legislation establishing no-fault auto insurance, both on the National and on the State level.

James Upshaw,
President, United Steelworkers
of America, Local 16A
Don Morris,
Recording Secretary, United
Steelworkers of America
Local 16A

Adopted by Convention action.

1971

WHEREAS, the people in Montana are and have been short changed by inside and outside interests by higher freight rates, higher advertising costs, higher insurance rates and other appealing processes for the cancellation of policies, hospital rates which have increased overwhelmingly, higher food prices (which includes paying for the water and cereal that are pumped into our meats, etc.); and

WHEREAS, natural resources are being taken from the state, processed, and then sold back to the people of Montana at greater rates than what other states can purchase them; and

WHEREAS, the people of Montana deserve state protection;

THEREFORE, BE IT RESOLVED, this 1971 Montana Building Trades Convention encourage the adoption of a Consumer Protection Agency funded by Federal and State funds; and

BE IT FURTHER RESOLVED, that a copy of this resolution be sent to the 1971 Montana State AFL-CIO Convention for their adoption.

Respectfully submitted,
John Hamrell, Business Mgr.
Laborer's No. 273

Adopted by Convention action.

RESOLUTION NO. 38

WHEREAS, the appetite of the largely out-of-state owned Montana Power Company, knows no bounds, and requests for exorbitant gas and electric rates are lately coming as frequently as Legislative Sessions.

WHEREAS this utility, whose common stock ownership is more than 85% vested outside the boundaries of Montana, is according to Federal Power Commission statistics, one of the most profitable of all private utilities in the nation,

WHEREAS, the "palace guard" of this utility is among the highest paid personnel in the nation with its Board Chairman receiving almost five times as much salary as does the Governor of Montana, plus a guaranteed pension in excess of \$33,000 a year upon retirement,

WHEREAS, lobbyists of the Montana Power Company are among the most numerous and probably the highest paid of any lobbying group to appear in Legislative halls, all of whose expenses are borne by the utility's captive customers,

WHEREAS, this utility gives thousands upon thousands of dollars extracted from its patrons via excessive rates, to the Montana Taxpayers Association, the State Chamber of Commerce and various local Chambers of Commerce and other organizations as a means of building "good will,"

WHEREAS, to further enhance the already lush dividends received by common stock owners and equally lush salaries paid the company's top officialdom, an additional tribute averaging \$77 a year per residential patron is now being requested,

WHEREAS, the requested increases amount to the same thing as a 3.5 cent hourly cut in pay for the average Montana patron-worker,

WHEREAS, Montana at present has no public office directly concerned with the interests of consumers,

BE IT RESOLVED that this meeting of the Southwest Building and Construction Trades Council on August 3, 1971 conclude there is absolutely no merit in the proposed rate increases,

BE IT FURTHER RESOLVED, if the company were more frugal in the salaries it pays its chief officers and spends on lobbying, and made other economies, there would indeed be no possible excuse for higher rates, and very possibly lower rate schedules could be adopted and still permit the utility to retain its position as the "top earner" of all utilities in the nation,

BE IT STILL FURTHER RESOLVED that we believe it to be within the prerogative of the forthcoming Constitutional Convention to provide for a constitutional office of Consumer Affairs, and we so request that such an office be incorporated in the new Montana Constitution,

AND, BE IT STILL FURTHER RESOLVED that this resolution be submitted for adoption by the 20th annual convention of the Montana State Building and Construction Trades Council meeting in Helena on August 17, 1971,

AND, BE IT STILL FURTHER RESOLVED that we ask the 15th Convention of Montana State AFL-CIO favorably consider the intent of this resolution by the Southwest Building and Construction Trades Council and incorporate same in its 1971 program.

Submitted by:
Joe Cappa, President
Bob Vivian, Secretary
Southwest Building Trades Council
P.O. Box 3243
Butte, Montana 59701

Adopted by Convention action.

REPRODUCED FROM
DETERIORATING COPY

RESOLUTION NO. 44

Recognizing that it is the responsibility of the State Legislature and the Montana Railroad and Public Service Commission, to act in the interest of Montana Citizens, we suggest that this interest has not been duly served in allowing excessive rates on the part of one of Montana's largest industries, the Montana Power Company. We therefore submit the following recommendations in the hopes that the Legislature and the Commission created by that Legislature will re-examine their responsibilities and honor them in the public interest.

WHEREAS, We support the establishment of an office of Council to represent the public in matters which come before the Public Service Commission. This office of Council shall be independent of the Commission, and

WHEREAS, We urge the Commission to re-examine its decision of last year to grant the Montana Power Company a rate increase of nearly seven million dollars, in view of the fact that in 1968 the Company enjoyed a net profit of 22.7% according to the Federal Power Commission; and in that in its re-examination it will require disclosure from the Company of the information we suggest in our recommendation to follow, and

WHEREAS, The Montana Legislative Council has been making a study of the Railroad and Public Service Commission in accordance with Senate Joint Resolution No. 2, approved last year by the Montana Legislature and Governor Anderson, and

WHEREAS, We urge that the Legislative Council recommend legislation to correct the weakness within the Public Service Commission, and

WHEREAS, We urge the Commission to move as quickly as possible in expediting the changes recommended which may be possible without prior legislation, or legislative authority, new therefore be it

RESOLVED, That the 19th Annual Montana State Building and Construction Trades Council request the Commission to abolish the "fair value" rate base and use depreciated original cost as is used by a majority of the states and the Federal Power Commission immediately temporarily lower the rate of return allowed the Montana Power Company to provide consumers fair and reasonable rates until such time as the depreciated original cost rate base can be fully implemented; that the annual appropriation to the Public Service Commission be increased to provide funds for our qualified professional staff; that the commission require by statute the disclosure by Utility and Railroad Corporations, specific information in detail as to their ownership, and subsidiaries who work for them, (including retainers and persons or firms with contractual arrangements) and where they spend their money; that the Commission require by statute the disclosure by Utilities of their policies concerning polling arrangements, installation charges, advance deposits, and recurring charges for installed equipment; that the Commission establish and enforce fair and reasonable standards with respect to these policies, and be it further

RESOLVED, That this resolution be submitted to the 14th Annual Montana State AFL-CIO Convention for consideration and approval.

1970

NAME LAWRENCE E. STIMATZ BILL No. HB 54

ADDRESS COURTHOUSE DATE 1-12-73
BUTTE

WHOM DO YOU REPRESENT? COUNTY ATTORNEY

SUPPORT? ✓ OPPOSE? _____ AMEND? _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

PHONE (406) 792-2383

LAWRENCE G. STIMATZ

COUNTY ATTORNEY
SILVER BOW COUNTY

PRESENTED BY:
ROBERT J. HARPER
INVESTIGATOR,
CONSUMER PROTECTION

BUTTE, MONTANA 59701

NAME Rod Gudge! House BILL No. 54
ADDRESS Box 908 DATE 1/12/73

WHOM DO YOU REPRESENT? Montana State Pharmaceutical Assn.

SUPPORT? X OPPOSE? _____ AMEND? Perhaps

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.



Proponent
of H.B. 54

RODERIC R. GUDGEL

Executive
for

Montana State Pharmaceutical Association
Montana Nursing Home Association

1720 NINTH AVENUE
PHONE (406) 442-1432

POST OFFICE BOX 908
HELENA, MONTANA 59601

STATEMENT
To
BUSINESS & INDUSTRY COMMITTEE
Montana House of Rep.
January 12, 1973 Re: HB 54

My name is Mr. Frank Switzer and I appear on behalf of the Montana Chamber of Commerce. I am a Director of that organization involved in the retailing business and I reside in Billings, Montana.

The Montana Chamber of Commerce appears before this committee for the purpose of urging your consideration of amendments to HB 54.

The major problem with HB 54 as we view it is the relationship of Section 8 subsection 2 which provides for class action suits. If this provision were removed the dangers inherent in several other sections of the bill would be considerably lessened. We therefore urge that you delete the class action provision of the bill.

A second major problem area is section 2. When combined with the right of class action the extremely loose working in this section opens the door to potential business community conflicts and consumer harassment. In recent sessions of the Montana Legislature we have had bills which propose that such things as trading stamps, premiums, price advertising, extended hours of operation, etc., were unfair methods of competition. Unless section two more specifically outlines what constitutes a potentially unfair or deceptive practice the class action provisions are extremely dangerous. If this committee sees fit to recommend that HB 54 do pass, section 2 be revised to more carefully stipulate those practices which are subject to action. We would recommend you consider eleven specific methods and act on the attached sheet. These were taken from the model act prepared by the Council of State Governments, (Alternative III).

A third request deals with what we believe would be simple justice and equity. In Section 8 subsection 4 it is provided that when an

The following unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared to be unlawful:

- (1) passing off goods or services as those of another;
- (2) causing likelihood of confusion or of misunderstanding as to the source, sponsorship, approval, or certification of goods or services;
- (3) causing likelihood of confusion or of misunderstanding as to affiliation, connection or association with or certification by another;
- (4) using deceptive representations or designations of geographic origin in connection with goods or services;
- (5) representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have or that a person has a sponsorship, approval, status, affiliation, or connection that he does not have;
- (6) representing that goods are original or new if they are deteriorated, altered, reconditioned, reclaimed, used, or secondhand;
- (7) representing that goods or services are of a particular standard, quality or grade, or that goods are of a particular style or model, if they are of another;
- (8) disparaging the goods, services, or business of another by false or misleading representation of fact;
- (9) advertising goods or services with intent not to sell them as advertised;
- (10) advertising goods or services with intent not to supply reasonably expectable public demand, unless the advertisement discloses a limitation of quantity;
- (11) making false or misleading statements of fact concerning the reasons for, existence of, or amounts of price reductions;

LEGISLATIVE REPORT



P. O. BOX 440 HELENA, MONTANA 59601

SUBJECT: HOUSE BILL NO. 54

"THE UNFAIR TRADE PRACTICES AND CONSUMER
PROTECTION ACT OF 1973"

Montana Retail Association Testimony Before
The House Business and Industry Committee

Mr. Chairman and Members of this Honorable Committee:

My name is Socs Vratiss, registered lobbyist of record for the Montana Retail Association.

The Montana Retail Association is not opposed to consumer legislation. It is opposed to legislation that is harassing and inflicts punitive punishment, and we suggest that House Bill 54 does both.

In the 1971 session the Montana Retail Association caused to be introduced before the 42nd Legislative Assembly House Joint Resolution No. 2, listing among its sponsors the then majority leader and minority leader. House Joint Resolution No. 2 urged the teaching of consumer education in all public schools in Montana, with emphasis directed to knowledge regarding the acquisition of goods, services and credit at an early age, calling upon the Superintendent of Public Instruction to recommend to all Montana school systems guide lines for the establishment of a consumer economics and education curriculum, and a minimum amount of instruction to be devoted thereto. The Joint Resolution was adopted by both bodies with only one dissenting vote. I am unhappy to say that two years later no steps have been taken to institute such measures in our school systems as called for in the Joint Resolution.

I would suggest to this committee that whether businessmen like it or not, or whether the consumer likes it or not, we are irrevocably wed each to the other. We need the consumer - the consumer needs us. House Bill 54 has the distinct possibility of polarizing the business-consumer community.

It is with reluctance, therefore, that I appear in opposition to House Bill 54.

House Bill 54 gives complete control and awesome powers to the Attorney General and to the government of this state. I would suggest to you that it is not the businessman alone who suffers when government takes over the reins of business. I would respectfully remind you that if the free enterprise system dies, the consumers freedom dies with it.

Section 1(4) of House Bill 54 provides that "examination" of documentary material shall include the taking of testimony under oath or acknowledgment in respect to the documentary material under consideration. The Attorney General should not have the power to take testimony under oath in conjunction with the powers to investigate and examine, because it could be too easily abused and it places the accused at an unfair disadvantage which would complicate the efficient enforcement of the Act. If testimony under oath is required in a case it should be obtained in court or under general discovery provisions with all of the attendant safeguards, including legal representation.

Section 3 is acceptable so long as the bill is amended to include a section which provides that compliance with FTC rules, regulations and decisions is an absolute defense to this Act.

Section 4(2) as drafted is completely unacceptable. This subsection exempts from the coverage of the Act certain persons who have published or disseminated a false or misleading advertisement without knowledge of its defects. However, as drafted, a retailer does not come within the exemption provided by this section. A retailer, the same as the owner of a newspaper, radio or television station, should not be held strictly accountable for deceptive information furnished by a supplier or manufacturer. It is far too great a burden upon a retailer to force him to investigate the veracity of all advertisements and information furnished by others. It must be remembered that retailers' advertising is generally furnished by the supplier or the manufacturers' advertising agency in the form of newspaper mats, television and radio announcements, and these agencies are often located in New York, Chicago, Los Angeles and other cities around the nation, and the small independent merchant of Montana is, therefore, at the mercy of eastern, mid-western and west coast advertising agencies. Therefore, this section should be amended to include retailers within the exempted classes.

Section 5 provides that whenever the Attorney General has reason to believe that any person is using an unlawful act, and that proceeding would be in the public interest, he may bring an action in the name of the state against such a person to restrain him. Such a provision gives the Attorney General unlimited power and should be restricted to the case where the Attorney General has probable cause to believe that the person is knowingly using deceptive practices. "Probable cause" is a phrase having a defined legal meaning; whereas "reason" is an ambiguous term which would have to be construed by the courts. The deceptive trade practices act of Oregon, for instance, specifically states that the Attorney General must have "probable cause" to believe. Again, it must be emphasized only knowing violators should be subject to the provisions of this act. Moreover, three days is not sufficient time to prepare for a hearing on a permanent injunction. At least 30 days' notice should be required.

Finally, Section 5 fails to provide any form of hearing prior to institution of injunctive proceedings by the Attorney General by which a quick and effective settlement of the issues can be reached without the necessity of a time-consuming and expensive

court hearing. Prior to the institution of injunctive proceedings, the person against whom the proceedings are contemplated should be allowed a reasonable opportunity to appear before the Attorney General and execute an assurance of voluntary compliance as provided in Section 10 of this Act, or reach any other appropriate settlement. This provision is present in the Oregon Deceptive Practices Act, which is acknowledged one of the better acts within the states.

The provisions in Section 6, which provide for consumer restitution at the end of an Attorney General injunctive proceeding in which the challenged practice has been found to violate Section 2, is acceptable so long as class actions are specifically prohibited for we believe that restitution for individual consumer plaintiffs who have suffered monetary losses as a result of deceptive practices should be provided. Again, I stress that class actions should be prohibited by amendment to Section 8.

Section 8(2) authorizes class actions. We suggest that class actions are not necessary to provide an efficient right of recovery for an injured consumer. Elimination of the class action provision would eliminate the institution of suits by those whose interests lie in the cumulative benefits to be derived from such actions - namely, plaintiffs' attorneys, and would in no way affect the right of the individual to redress his monetary grievances as a result of unlawful acts or practices.

Moreover, class actions do not promote efficient and speedy settlement of consumer claims, as does strict public enforcement. It may be virtually impossible to settle a class action after it has been filed because of the difficulty in determining who is in the class, who is damaged, if at all, and who will agree to what settlement. Elimination of the class action provisions will not preclude the consumer from obtaining redress for his injury, but will assure that only consumers who have actually been damaged will receive restitution. This would be achieved in a shorter period of time and at considerably less cost to all concerned if only individual and Attorney General actions are allowed. The Oregon Deceptive Trade Practices Act and the Idaho Consumer Protection Act both specifically prohibit class actions.

Therefore, Section 8(2) should be deleted and subsection (1) amended to provide that a person injured as a result of the use of a deceptive trade practice may bring an individual but not a class action.

Section 2, which provides a general prohibition of unfair methods of competition and unfair or deceptive acts or practices, is unacceptable as drafted for two reasons:

- (1) there is no requirement of knowledge as a condition precedent to a deceptive trade practice; and
- (2) the general prohibition is too broad and provides no definitive standards as to the elements of a deceptive trade practice.

The purpose of the Act should be to prevent and penalize intentional deceptive practices, not acts innocently committed or in reasonable reliance upon information of others. One who does not know, or in the exercise of due care should not know that he is engaging in deceptive practices should not be found to have violated this Act. Deception, upon which the Act is based, implies some knowing or intentional act on the part of the deceivers; therefore, the well-meaning merchant should not be punished.

Furthermore, the prohibitions of the Act should be specific enough so that retailers will have a basis for prediction and comprehension of acts or practices which will be held unlawful. Section 2, as drafted, is ambiguous and subject to varying interpretations by reasonable businessmen. This section should be amended to include a list of specific prohibited practices which are based upon well-established violations of law. This list should provide definitive standards of conduct and should not include any catchall paragraphs. The purpose of such paragraphs is to anticipate any novel practices not covered by the preceding enumerated prohibitions. But if practices, as yet undeveloped, do arise and require inclusion in the list, amendments are possible. Obviously, a catchall provision deprives a businessman of predictability and may also lead to frivolous litigation.

Two provisions necessary to protect the interest of retailers are conspicuously absent from this Act. First, it should be an absolute defense to show that the challenged practices are subject to and comply with federal statutes or with any of the rules, regulations or decisions interpreting such statutes. The addition of this provision would afford the retailers a solid foundation of federal statutory law, decisions and interpretations upon which to base his actions. Moreover, this provision is consistent with the limitations imposed in Section 3(2) upon the Attorney General's power to make interpretations and regulations under the Act.

Second, the Act does not incorporate a statute of limitations for actions accruing under its provisions. Such a provision would eliminate the institution of suits brought long after the recollection of persons involved has blurred or evidence becomes difficult to ascertain, but would not prevent the timely claims of injured plaintiffs. A one-year statute of limitation for actions should be added to this Act. Such a one-year statute of limitations appears in Oregon's Deceptive Trade Practices Act, and the Idaho Consumer Protection Act has a two-year statute of limitations.

I am certain that it is not the intent of the author of this bill nor any members of this committee to deliberately punish the thousands of legitimate businessmen within the state of Montana. I do suggest to you that while this intent is not present, the bill, as written, specifically does just that.

I would further suggest to this honorable committee that a bill of this magnitude, with its far-reaching consequences, needs to be subjected to careful and deliberate scrutiny in order that the well-meaning, legitimate businessman not be subjected to undue harassment and punitive punishment for acts committed by that vast minority of business people who might engage in unfair practices. I would remind you, in closing, that Montana's economy could well be the loser if House Bill 54 is enacted and I would respectfully suggest that it do not pass.

BUSINESS AND INDUSTRY COMMITTEE

January 17, 1973

The Business and Industry meeting was called to order this date in the Governor's reception room at 10:30 a.m. with Chairman Mehrens presiding. All members were present.

The following bills were before the committee for consideration:

HB 95...Rep. Tierney, chief sponsor, gave a summary on this bill and also proposed an amendment, which is attached. Other proponents were Joseph L. LaMere and Delores Daniels, both of whom represented the Indian Education Center in Great Falls, Montana.

HB 99...Rep. Colbertg, chief sponsor, presented this bill to the committee. Other proponents to this bill were the following: Mr. Robert E. Hall; Mr. Paul Richards, representing the Montana Public Interest Research Group; Mr. William G. Dewolf, from the Union Market; Jean Warren, representing the Sierra Club; Rep. Marbut; and many others who were unable to testify.

Opponents to this bill were the following: Mr. Mark Richlen, Mr. Doug Stewart, Mr. Larry Chenoweth, all of whom represented the Missoula & Billings Recycling Centers; Senator Jack Devine; Rep. Haines, who submitted a paper with signatures of other opponents, which is attached; Mr. Frank Copps, of Montana State Food Dist. of Super Save Mkts, Inc.; Mr. Morris Goan of Wyoming-Montana Beverages, Inc.; Mr. Phil Cassel, of Montana Soft Drink Association; Mr. John H. Risken, of U.S. Brewers Association; and Mr. Alfred F. Dougherty, representing the Montana Beer Wholesalers' Association. Prepared statements are attached.

The following actions were taken on bills before the committee:

HB 54...Rep. Harper moved to amend HB 54 (those amendments submitted by the subcommittee are attached). The motion was seconded and passed with Rep. Selstad voting NO. Rep. Harper moved to amend HB 54 (amendments attached). The motion was seconded and passed with Rep. Driscoll voting NO. Rep. Harper moved that HB 54 as amended DO PASS. The motion was seconded and passed with Rep. Lockrem, Rolfe, and Selstad voting NO.

HB 99...Rep. Lockrem moved that HB 99 DO PASS. The motion was seconded and passed unanimously.

HB 95...Rep. Lien moved to amend HB 95 on page 1, section 1, line 21, after the word "articles" by inserting the words "for display purposes". The motion was seconded and passed with Rep. Rolfe voting NO. Rep. Lien moved HB 95 as amended DO PASS. The motion was seconded and passed with Rep. Rolfe voting NO.

Mr. Chairman:

We, your sub-committee on business and industry, having had under consideration House Bill No. 54 respectfully report as follows:

That HB 54, be amended

on page 2 by adding a new subsection (5) to read: "'National advertising' means any advertising run simultaneously in five or more states and over which a local advertiser has no control.", and

further amend on page 3, by adding a new subsection (3) to read: "National advertising shall be exempt from this act.", and

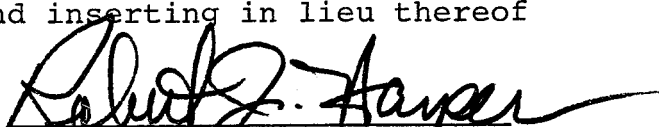
further amend on page 3, section 5, line 19, after the word "least" by striking the following material "three (3)" and inserting in lieu thereof the following new material "twenty (20)", and

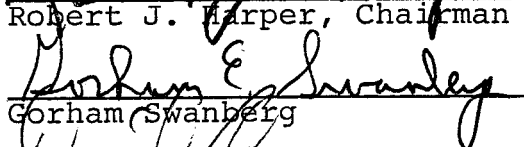
further amend on page 11, section 16, line 15, after the word "attorney" by striking the following material "with prior approval of the attorney general", and

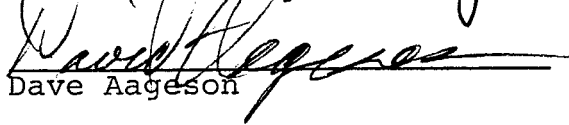
further amend on page 11, section 16, line 19, after the word "shall" by striking the following material "make a full report thereon to" and inserting in lieu thereof the word "notify", and

further amend on page 11, section 16, line 20, after the word "general," by striking the following material ", including the final disposition of the matter within thirty (30) days.", and inserting in lieu thereof the following new material "as the nature of the action and the parties to the action within thirty (30) days of the filing of the action. The county attorney shall make a report thereon to the attorney general within thirty (30) days of the final disposition of the matter." , and

further amend on page 4, section 7, line 12, after the word "and" by striking the word "tenants" and inserting in lieu thereof the word "tenements"


Robert J. Harper, Chairman


Gorham E. Swanberg


Dave Aageson

HB 54 Rep. Harper amendments

be amended on page 5, section 8, starting with line 6 through and including line 19 on page 6, by striking in its entirety all the material contained therein, and

further amend on page 6, section 9, line 20, after the word "Section" by striking the figure "9" and inserting in lieu thereof the figure "8", and

further amend on page 7, section 10, line 9, after the word "Section" by striking the figure "10" and inserting in lieu thereof the figure "9", and

further amend on page 8, section 11, line 13, after the word "Section" by striking the figure "11" and inserting in lieu thereof the figure "10", and

further amend on page 9, section 12, line 5, after the word "Section" by striking the figure "12" and inserting in lieu thereof the figures "11", and

further amend on page 9, section 13, line 10, after the word "Section" by striking the figure "13" and inserting in lieu thereof the figure "12", and

further amend on page 10, section 14, line 7, after the word "Section" by striking the figure "14" and inserting in lieu thereof the figure "13", and

further amend on page 11, section 15, line 7, after the word "Section" by striking the figure "15" and inserting in lieu thereof the figure "14", and

further amend on page 11, section 16, line 12, after the word "Section" by striking the figure "16" and inserting in lieu thereof the figure "15", and

further amend on page 11, section 17, line 22, after the word "Section" by striking the figure "17" and inserting in lieu thereof the figure "16", and

further amend on page 12, section 19, line 2, after the word "Section" by striking the figure "18" and inserting in lieu thereof the figure "17".

Coll. No. _____ Bx/Fd No. _____

ROLL CALL

BUSINESS AND INDUSTRY COMMITTEE

42nd LEGISLATIVE SESSION 1973
43rd

January

DATE	1/10	1/12/73	1/15/73	1/17/73	1/19/73	1/22/73	1/24/73	1/26/73	1/29/73	1/31/73	2/2/73	2/5/73							
Gordon McGowan	P	P	P	P	P	P	P	P	P	P	P	P							
Fred Broeder	<i>meeting</i>	P	P	P	P	P	P	P	P	P	P	P							
Jack DeVine	P	P	P	P	P	P	P	P	P	P	P	P							
<i>Glenn Drake</i>	P	P	P	P	P	P	P	P	P	P	P	P							
William (BILL) Groff	<i>meeting</i>	P	P	P	P	P	P	P	P	P	P	P							
Frank Hazelbaker	P	P	P	P	P	P	P	P	P	P	P	P							
P. J. Keenan	P	P	P	P	P	P	P	P	P	P	P	P							
William Lowe	P	P	P	P	P	P	P	P	P	P	P	P							
A. Russell	P	P	P	P	P	P	P	P	P	P	P	P							
Jimmy Shea	<i>meeting</i>	P	P	P	P	P	P	P	P	P	P	P							
Mersey DeWolfe, Chairman	P	P	P	P	P	P	P	P	P	P	P	P							

REPORTED OF
OF COMMITTEE

OUT OF COMM.

GRANTED TO

BILL NO.	ENTERED COMM.	OUT OF COMM.	GRANTED TO	
OR 29	1-25	2-2	2-10	Be Concurred In
1B 40	1-25	2-7		" " "
1B 54	2-5	2-13		Be Conc In As Amend.
1B 59	1-16	2-1	2-9	Be Concurred In
1B 84	1-20	1-29	2-14	Be Conc In As Amend.
1B 95	1-25	2-2		Be Concurred In
1B 111	2-3	2-12	2-20	Be Not Conc. In
1B 134	1-27	2-5	2-13	Be Conc. In
1B 308	2-8	2-16		Be Conc. In
AR #10				Be Concurred in 2/3
B 367	2-9	2-17		Be Conc. In
1B 83	2-12	2-20		Be Not Conc. In Not back to Comm.
204	2-10	2-19		Be Conc. In
251	2-10	2-19		Be Not Conc. In
252	2-10	2-19		Be Conc. In
270 ✓				?
272	2-10	2-19		Be Conc. In
308 ✓				?
1B 218	1-19			Do Pass 1/19
1B 222	1-19			" " 1/24
1B 85	1-20	1-29		Be Conc In As Amend.
1B 278 ✓	2-10	2-20		Not Conc. In
121		2-27		Be Not Conc. In.
122				

February 21, 1973

The Committee on Business and Industry met on Wednesday, February 21, 1973 at 11:00 A. M. in Room 415. Roll call was taken by the Secretary and all members were present.

House Bill No. 54 was placed before the Committee by the Chairman, Percy DeWolfe.

Robert J. Harper, Clyde Jarvis, and Lawrence G. Stimatz appeared before the committee and spoke at length and in Support of House Bill No. 54.

Socs Vratiss from the Montana Retailers Association, Senator Bollinger, Dean Zinnecker representing the Montana Association of County Commissioners appeared before the Committee in favor of amending the bill.

Two amendments were left with the Committee to be studied and it was decided by the Committee to have a hearing on this bill on Saturday, February 24th, 1973 after adjournment of the Senate.

There being no further business before the committee members, the meeting adjourned at 12:30 P.M.


DeWolfe

February 24, 1973

The Committee on Business and Industry met on Saturday, February 24th, after adjournment of the Senate around 4 o'clock A.M. in Room 415. Roll call was taken by the Secretary. Neil J. Lynch, Majority Floor Leader came for the meeting.

House Bill 512 was discussed and it was decided by the members of the Committee to Defer Action until a later date. Hazelbaker made the motion, seconded by McGowan.

House Bill No. 218 was discussed at length and House Bill 480. A motion was made by Rosell and seconded by Lowe to defer action on these two bills until a later date.

House Bill No. 54 was discussed at length by the Committee. A question and answer period took place. Roll call was taken by the Secretary. Six (6) members voting No. Four (4) voting Yes. Motion was made by Senator Rosell and seconded by Senator Lowe that House Bill No. 54 be reconsidered, and the amendments should have further study.

Motion was made by McGowan and seconded by Devine that the meeting adjourn. Meeting adjourned at 5:46 P. M. Saturday, February 24th.

DeWolfe

Chairman

Date Feb-24 21 Bill No. 54 Time 5 ⁴⁵ P.M.

NAME	YES	NO
Gordon McGowan, Vice Chairman		✓
Fred Broeder	✓	
Jack DeVine		✓
Glenn Drake <i>Aher</i>	<i>absent</i>	
Wm. A. Groff (Bill)		✓
Frank Hazelbaker		✓
P. J. Keenan	<i>absent</i>	
William Lowe	✓	
A. Rosell	✓	
Jimmy Shea	✓	
Percy DeWolfe, Chairman		✓
	4	5

Secretary, Jean Geier *From Atty. Gen.* Chairman, Percy DeWolfe

Motion: Rosell - Bus. Reg. - Reconsider amendment

Date _____ Bill No. 54 Time 11 ¹⁵

NAME	YES	NO
Gordon McGowan, Vice Chairman		✓
Fred Broeder	✓	
Jack DeVine		✓
Glenn Drake <i>abs</i>	✓	
Wm. A. Groff (Bill)		✓
Frank Hazelbaker		✓
P. J. Keenan		✓
William Lowe	✓	
A. Rosell	✓	
Jimmy Shea		✓
Percy DeWolfe, Chairman		✓

4 yes
7 ✓

Secretary, Jean Geier Chairman, Percy DeWolfe

Motion: Substitute Motion Rosell
Votes - 4 yes - 7 No

SENATE COMMITTEE BUSINESS AND INDUSTRY

Date February 24, House Bill No. 54 Time 5:35 ^{P.}~~M.~~ Saturday

NAME	YES	NO
Gordon McGowan, Vice Chairman		✓
Fred Broeder	✓	
Jack DeVine		✓
Glenn L. Aber L. Aber	Absent	
Wm. A. Groff (Bill)		✓
Frank Hazelbaker		✓
P. J. Keenan	Absent	
William Lowe	✓	
A. Rosell	✓	
Jimmy Shea	✓	
Percy DeWolfe, Chairman		✓
Neil J. Lynch, Majority Floor Leader		✓

Secretary, Jean Geier

Chairman, Percy DeWolfe

Motion: BE NOT CONCURRED IN.

February 28, 1973

The Committee on Business and Industry met on Wednesday, February 28, 1973, in Room 412 at 11 o'clock for discussion of House Bills No's 54, 404, 365, 393 and 204, 227. Roll call was taken by the secretary with all members being present. Senator Lynch, Majority Floor Leader attended the meeting.

House Bill No. 54 was placed before the Committee by the Chairman. Senator Bollinger, placed before the committee another amendment to be considered with those previously presented by him. Bollinger, placed before the committee another admendment to be considered with those previously presented by him. Bollinger was excused after discussion. After discussion by the Committee, a motion was made by Senator Shea that the word "shall" be changed to the word "may". Motion was seconded and carried. The proposed amendment to be adopted was made by Senator Devine and seconded by Senator McGowan and carried by a roll call vote of 7 ayes and 4 nos. Majority Floor Leader Lynch voted "aye". Senator Shea then moved that House Bill 54, as amended, be concurred in. Senator Rosell next offered a substitute motion that the amendments of Soc Vratiss be adopted rather than those of Sen. Bollinger. Motion seconded by Senator Lowe. Upon roll call vote, the substitute motion failed by a vote of 4 ayes and 7 noes. The motion of Senator Shea was then acted on, duly seconded by Keenan, and carried by a vote of 8 ayes and 4 noes, with Majority Floor Leader, Lynch voting aye.

House Bill No. 365: Representative Norman appeared before the Committee in favor of House Bill 365. A motion was made by Devine and seconded by Rosell that House Bill 365 Be Concurred in. Motion carried.

House Bill 393: Discussion of the bill and a motion was made by Groff and seconded by Lowe that House Bill 393 Be Concurred in. Motion carried.

House Bill 204: Douglas Dahl, Secretary-Treasurer, Montana School Owners Association spoke in behalf of the bill. A motion was made by Senator Lowe and seconded by Senator Hazelbaker that the bill Be Concurred in. Motion carried.

SENATE COMMITTEE BUSINESS AND INDUSTRY

Date 2/28/73 House Bill No. 56 Time 11:15

NAME	YES	NO
Gordon McGowan, Vice Chairman	/	
Fred Broeder		/
Jack DeVine	/	
Glenn Drake		/
Wm. A. Groff (Bill)	/	
Frank Hazelbaker	/	
P. J. Keenan	/	
William Lowe		/
A. Rosell		/
Jimmy Shea	/	
Percy DeWolfe, Chairman	/	
<i>Legolue</i>	/	
	8	4

Secretary, Jean Geier

Chairman, Percy DeWolfe

Motion: Motion was amended -
Shea - Keenan - Ballinger
Legolue

Verbatim Amendments H. B. #54 -

of H. B. 54

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page 2, line 11, after the period (.) following the word "thereof"
by adding the following language: "If testimony under oath is
required in a case, such testimony under oath must be obtained
in court or under general discovery provisions with all
attendant safeguards, including legal representation."

and inserting in lieu thereof the words.....

Mr. Chairman: ^{on BxH No} move to amend Section ^{2, H.B. 54} ~~by striking out in line~~

page 2, beginning on line 17 after the period "." by adding the following language:

"The following unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared to be unlawful, where a person knows, or in the exercise of due care should know, that he has in the past, or is:

(1) Passing off goods or services as those of another;

(2) Causing likelihood of confusion or of misunderstanding as to the source, sponsorship, approval, or certification of goods or services;

(3) Causing likelihood of confusion or of misunderstanding as to affiliation, connection, or association with, or certification by another;

(4) Using deceptive representations or designations or geographic origin in connection with goods or services;
~~and inserting in lieu thereof the words~~

(5) Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have or that a person has a sponsorship, approval, status, affiliation, or connection that he does not have;

(6) Representing that goods are original or new if they are deteriorated, altered, reconditioned, reclaimed, used, or secondhand;

(7) Representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another;

(8) Disparaging the goods, services, or business of another by false or misleading representation of fact;

(9) Advertising goods or services with intent not to sell them as advertised;

(10) Advertising goods or services with intent not to supply reasonably expectable public demand unless the advertisement discloses a limitation of quantity;

Amendment to Section 2, H.B. 54 continued

(11) Making false or misleading statements of fact concerning the reasons for, existence of, or amounts of price reductions."

Mr. Chairman: I move to amend Section _____ by ~~striking out in line~~
adding a new sub-section (3) on page 3 as follows:

"(3) Compliance with FTC rules, regulations and decisions is
an absolute defense to this Act."

and inserting in lieu thereof the words _____

Mr. Chairman: ~~to move to amend Section 4, subsection (2) by striking out in line~~

in line 10, page 3, by inserting after the word "the" the
words "retail merchants,"

and inserting in lieu thereof the words

Mr. Chairman: I move to amend Section 5 of H.B. 54 by striking out in line

20, page 3, the word "reason"

and inserting in lieu thereof the words "probable cause"

line 22, page 3, by inserting before the word "use" the word
"knowingly"

and inserting in lieu thereof the words.

adding a new paragraph on page 4, after line 12, with the
following language: "Prior to the institution of injunctive
proceedings the person or persons against whom proceedings are
contemplated will be allowed a reasonable opportunity to appear
before the Attorney General and execute an assurance of
voluntary compliance or reach any other appropriate settlement."

and inserting in lieu thereof the words.

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Coll. No. _____ Bx/Fd No. _____
Mr. Chairman: I move to amend Section 8 of H.B. 54 by ~~striking out in line~~

inserting after the word "an" on line 12, page 7 the following words:

"individual, but not a class"

and inserting in lieu thereof the words

Mr. Chairman: I move to amend ~~Section~~ House Bill 54 by ~~striking out in the~~
adding a new section following Section 16 on page 13 as follows:

"Section 17. Actions brought under this Act shall be commenced
within one (1) year from the discovery of the unlawful method,
act or practice." and renumbering the remaining sections of the
Act.

and inserting in lieu thereof the words

duties may be paid from library funds. Trustees shall meet and elect a chairman, and such other officers as they deem necessary, for one (1) year terms. The board of trustees shall have the power and duties as specified in sections 44-213 through 44-225.

Section 3. This act is effective on its passage and approval.

Approved: March 10, 1973.

CHAPTER NO. 274

An Act to Amend Section 4-322, R.C.M. 1947, Forbidding Beer Wholesalers From Selling, Giving, Delivering or Distributing Beer to the Public.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 4-322, R.C.M. 1947, is amended to read as follows:

"4-322. It shall be *unlawful* for any wholesaler to *give*, sell, deliver or distribute any beer purchased or acquired by him to the public."

Approved: March 14, 1973.

CHAPTER NO. 275

An Act to be Cited as the Montana Unfair Trade Practices and Consumer Protection Act of 1973; Prohibiting Unfair Trade Practices and Providing Investigation Procedures and Penalties for Violations of the Act.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. As used in this act:

(1) "Person" means natural persons, corporations, trusts, partnerships, incorporated or unincorporated associations, and any other legal entity.

(2) "Trade" and "commerce" means the advertising, offering for sale, sale, or distribution of any services and any property, tangible or intangible, real, personal or mixed, and any other article, commodity, or thing of value, wherever situate, and shall include any trade or commerce directly or indirectly affecting the people of the state.

(3) "Documentary material" means the original or a copy

of any book, record, report, memorandum, paper, communication, map, chart, photograph, mechanical transcription, or other tangible document or recording, wherever situate.

(4) "Examination" of documentary material includes the inspection, study, or copying of such material, and the taking of testimony under oath or acknowledgment in respect to any such documentary material or copy thereof.

(5) "National advertising" means any advertising run simultaneously in five or more states and over which a local advertiser has no control.

(6) "Department" means the department of business regulation created in section 82A-401.

Section 2. Unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are unlawful.

Section 3. (1) It is the intent of the legislature that in construing section 2 of this act due consideration and weight shall be given to the interpretations of the federal trade commission and the federal courts relating to section 5 (a) (1) of the Federal Trade Commission Act [15 U.S.C., 45 (a) (1)], as amended; and

(2) The department may make rules and regulations interpreting the provisions of section 2 of this act. Such rules and regulations shall not be inconsistent with the rules, regulations and decisions of the federal trade commission and the federal courts in interpreting the provisions of section 5 (a) (1) of the Federal Trade Commission Act [15 U.S.C., 45 (a) (1)], as amended.

Section 4. Nothing in this act shall apply to:

(1) actions or transactions permitted under laws administered by the Montana public service commission acting under statutory authority of this act or the United States.

(2) acts done by the retail merchants, publisher, owner, agent, or employee of a newspaper, periodical or radio or television station or advertising agency in the publication or dissemination of an advertisement, when the owner, agent or employee did not have knowledge of the false, misleading or deceptive character of the advertisement and did not have a direct financial interest in the advertised product or service.

(3) National advertising shall be exempt from this act.

Section 5. Whenever the department has reason to believe that any person is using, has used, or is about to knowingly use

any method, act or practice declared by section 2 of this act to be unlawful, and that proceeding would be in the public interest, the department may bring an action in the name of the state against such person to restrain by temporary or permanent injunction the use of such method, act or practice, upon the giving of appropriate notice to that person. The notice must state generally the relief sought and be served in accordance with section 13 of this act in at least twenty (20) days before the hearing of the action. The action may be brought in the district court in which such person resides or has his principal place of business, or, with consent of the parties, may be brought in the district court of Lewis and Clark County. The courts are authorized to issue temporary or permanent injunctions to restrain and prevent violations of this act, and such injunctions shall be issued without bond.

Section 6. The court may make such additional orders or judgments as may be necessary to restore to any person any moneys or property, real or personal, which may have been acquired by means of any practice in this act declared to be unlawful, including the appointment of a receiver or the revocation of a license or certificate authorizing that person to engage in business in this state, or both.

Section 7. When a receiver is appointed by the court pursuant to this act, he has the power to sue for, collect, receive and take into his possession all goods and chattels, rights and credits, moneys and effects, lands and tenements books, records, documents, papers, choses in action, bills, notes and property of every description, derived by means of any practice declared to be illegal and prohibited by this act, including property with which such property has been mingled if it cannot be identified in kind because of such commingling, and to sell, convey, and assign the same and hold and dispose of the proceeds thereof under the direction of the court. Any person who has suffered damages as a result of the use of employment of any unlawful practices and submits proof to the satisfaction of the court that he has in fact been damaged, may participate with general creditors in the distribution of the assets to the extent he has sustained out-of-pocket losses. In the case of a partnership or business entity, the receiver shall settle the estate and distribute the assets under the direction of the court. The court has jurisdiction of all questions arising in the proceedings and may make orders and judgments as may be required.

Section 8. (1) Any person who purchases or leases goods or services primarily for personal, family or household purposes and thereby suffers any ascertainable loss of money or property, real or personal, as a result of the use or employment by another per-

son of a method, act or practice declared unlawful by section 2 of this act, may bring an individual, but not a class action under rules or civil procedure in the district court in which the seller or lessor resides or has his principal place of business or is doing business, to recover actual damages or two hundred dollars (\$200), whichever is greater. The court may, in its discretion, award up to three (3) times the actual damages sustained and may provide such equitable relief as it deems necessary or proper.

(2) Upon commencement of any action brought under subsection (1) of this section, the clerk of court shall mail a copy of the complaint or initial pleading to the department and the appropriate county attorney and, upon entry of any judgment or decree in the action, shall mail a copy of such judgment or decree to the department and the appropriate county attorney.

(3) In any action brought under this section, the court may award the prevailing party reasonable attorney fees incurred in prosecuting or defending the action.

(4) Any permanent injunction, judgment or order of the court made under section 5 of this act shall be prima facie evidence in an action brought under section 8 of this act that the respondent used or employed a method, act or practice declared unlawful by section 2 of this act.

Section 9. In the administration of this act, the department may accept an assurance of voluntary compliance with respect to any method, act or practice deemed to be violative of the act from any person who has engaged or was about to engage in any such method, act or practice. Any such assurance shall be in writing and be filed with and subject to the approval of district court in which the alleged violator resides or has his principal place of business, or the district court of Lewis and Clark County. Assurance of voluntary compliance is not an admission of violation for any purpose. Matters thus closed may at any time be reopened by the department for further proceedings in the public interest, pursuant to section 5.

Section 10. (1) When it appears to the department that the person has engaged in, is engaging in, or is about to engage in any act or practice declared to be unlawful by this act, or when the department believes it to be in the public interest that an investigation should be made to ascertain whether a person in fact has engaged in, is engaging in or about to engage in, any act or practice declared to be unlawful by this act, the department may execute in writing and cause to be served upon any person who is believed to have information, documentary material or physical evidence relevant to the alleged or suspected violation, an investi-

gative demand requiring such person to furnish, under oath or otherwise, a report in writing setting forth the relevant facts and circumstances of which he has knowledge, or to appear and testify or to produce relevant documentary material or physical evidence for examination, at such reasonable time and place as may be stated in the investigative demand, concerning the advertisement, sale or offering for sale of any goods or services or the conduct of any trade or commerce that is the subject matter of the investigation.

(2) At any time before the return date specified in an investigative demand, or within twenty (20) days after the demand has been served, whichever period is shorter, a petition to extend the return date, or to modify or set aside the demand, stating good cause, may be filed in the district court where the person served with the demand resides or has his principal place of business or in the district court of Lewis and Clark County.

Section 11. To accomplish the objectives and to carry out the duties prescribed by this act, the department, in addition to other powers conferred upon it by this act, may issue subpoenas to any person, administer an oath or affirmation to any person, conduct hearings in aid of any investigation or inquiry, prescribe forms and promulgate rules and regulations as may be necessary, which rules and regulations shall have the force of law; provided that none of the powers conferred by this act may be used for the purpose of compelling any natural person to furnish testimony or evidence which might tend to incriminate him or subject him to a penalty or forfeiture; and provided further that information obtained pursuant to the powers conferred by this act shall not be made public or disclosed by the department or its employees beyond the extent necessary for law enforcement purposes in the public interest.

Section 12. Service of any notice, demand or subpoena under this act shall be made personally within this state, but if such cannot be obtained, substitute service may be made in the manner provided in the Montana Rules of Civil Procedure.

Section 13. If any person fails or refuses to file any statement or report, or obey any subpoena or investigative demand issued by the department, the department may, after notice, apply to the district court and, after hearing thereon, request an order:

(1) granting injunctive relief to restrain the person from engaging in the advertising or sale of any merchandise or the conduct of any trade or commerce that is involved in the alleged or suspected violation;

(2) vacating, annulling, or suspending the corporate charter of a corporation created by or under the laws of this state or revoking or suspending the certificate of authority to do business in this state of a foreign corporation or revoking or suspending any other licenses, permits or certificates issued pursuant to law to such person which are used to further the allegedly unlawful practice; and

(3) granting such other relief as may be required, until the person files the statement or report, or obeys the subpoena or investigative demand. Any disobedience of any final order entered under this section by any court shall be punished as a contempt thereof.

Section 14. (1) Any person who violates the terms of an injunction issued under section 5 of this act shall forfeit and pay to the state a civil penalty of not more than ten thousand dollars (\$10,000) per violation. For the purposes of this section, the district court issuing an injunction retains jurisdiction, and the cause continued, and in such cases the department acting in the name of the state may petition for recovery of civil penalties.

(2) In any action brought under section 5 of this act, if the court finds that a person is willfully using or has willfully used a method, act or practice declared unlawful by section 2 of this act, the department, upon petition to the court, may recover, on behalf of the state, a civil penalty of not more than five hundred dollars (\$500) per violation.

(3) Any person who engages in a fraudulent course of conduct declared unlawful by section 2 of this act shall, upon conviction, be fined not more than two thousand dollars (\$2,000), imprisoned for not more than one (1) year, or both, in the discretion of the court. Nothing in this subsection limits any other provision of this act.

(4) For purposes of this section, a willfull violation occurs when the party committing the violation knew or should have known that his conduct was a violation of section 2 of this act.

Section 15. Upon petition by the department, the district court may, in its discretion, order the dissolution or suspension or forfeiture of franchise of any corporation which violates the terms of any injunction issued under section 5 of this act.

Section 16. It is the duty of the county attorney to lend to the department such assistance as the department may request in the commencement and prosecution of actions pursuant to this act, or, the county attorney may institute and prosecute actions in the same manner as provided for the department. If an action

is prosecuted by the county attorney alone, he shall notify the department as to the nature of the action and the parties to the action within thirty (30) days of the filing of the action. The county attorney shall make a report thereon to the department within thirty (30) days of the final disposition of the matter.

Section 17. The county attorney in first and second class counties may designate an employee to act as a full-time investigator.

Section 18. If any provision of this act is declared unconstitutional, or the application to any person or circumstances is held invalid, the constitutionality of the remainder of the act and its applicability to other persons and circumstances is not affected.

Section 19. This act shall be cited as the "Montana Unfair Trade Practices and Consumer Protection Act of 1973."

Approved: March 15, 1973.

CHAPTER NO. 276

An Act to Establish Procedures for the Disposition of Contributions Made to the Fire Department Relief Association Funds By Unmarried Members.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. If any fireman shall die not leaving a widow or orphan, the fire department relief association shall compute the total contributions made to the fund by said deceased member, and if the deceased member has designated, in writing, to the association a beneficiary to whom such funds shall be paid, the association shall issue a warrant for said sums payable to that beneficiary; if the deceased member has not nominated a beneficiary, said contributions shall be paid to his estate.

Approved: March 15, 1973.

CHAPTER NO. 277

An Act to Amend Section 71-1516, R.C.M. 1947, to Include Adopted Children Who Have Been Defined As "Hard-to-Place" Within Eligibility Requirements For Medical Assistance; and to Provide Financial Assistance to the Adoptive Parents of "Hard-to-Place" Children.